

REMARKS

Claim 15 is amended herein. Claims 18 and 21-23 are canceled herein. Claims 24-32 are added herein. Upon entry of this amendment, claims 15-17, 19, 20, and 24-32 will be pending. Applicants respectfully request reconsideration and allowance of claims 15-17, 19, 20, and 24-32.

Double Patenting

Applicants file herewith a terminal disclaimer in compliance with 37 CFR § 1.321(c) to overcome the nonstatutory-based rejection of claims 15-23, along with payment of the terminal disclaimer fee. Applicants therein disclaim any part of the term of any patent granted which would extend beyond the expiration date of copending Application No. 10/400,773 and agree that any patent granted be enforceable only for and during the period that the patent is commonly owned with the copending application. M.P.E.P. § 804.02.

35 U.S.C. § 112 Rejections

Claims 21-23 are canceled herein, which should obviate the present rejection. As such, Applicants respectfully request that the rejection be withdrawn.

35 U.S.C. § 102 Rejections

Claim 15

Reconsideration of the rejection of claim 15 under 35 U.S.C. §102 as being anticipated by Bishoff et al. is respectfully requested.

Claim 15 is directed to:

[a]n aggregation base for use with an apparatus received within a subterranean cavity for detecting and controlling subterranean termites, said aggregation base being attractive to said termites for forming an

aggregation site for said termites, said apparatus having a replaceable device sized and shaped such that the device may be removed from the apparatus and replaced without substantially disturbing the aggregation base, said aggregation base comprising:

- a generally cylindrical outer surface,
- at least one void within said aggregation base for forming an aggregation site for said termites, and
- at least one channel passing completely through the aggregation base from the cylindrical outer surface and leading inward to said void.

(emphasis added).

"To anticipate a claim, the reference must teach every element of the claim." M.P.E.P. § 2131. But the cited reference fails to teach or suggest every element of claim 15. In particular, the reference fails to teach or suggest an aggregation base having a generally cylindrical outer surface with at least one channel passing completely through the aggregation base from the cylindrical outer surface and leading inward to the void. This omission is significant, as the at least one channel passing from the cylindrical outer surface to the void provides substantial benefits with respect to attraction and recruitment of termites immediately into the aggregation base upon contact with the aggregation base.

Bishoff et al. disclose a bottom element, or cup, 72 that receives a pest baiting device 80 (Fig. 2). The cup 72 has slots 74, allowing pests to gain access to the interior of the cup via an outer wall 81 of the pest baiting device 80. The pest baiting device additionally includes a substantially enclosed channel 82 defined by an inner wall 83 for receiving an elongated member 48 used for extraction of the cup 72. Although pests can gain access to the pest baiting device 80 via the slots 74, Bishoff et al. clearly fail to disclose or suggest any channel passing through the pest baiting device 80 from the outer wall 81 to the enclosed channel 82. Instead, Bishoff et al. teach a pest baiting device 80 having an enclosed channel completely removed from and inaccessible from the outer wall 81 of the pest baiting device 80. To gain access to the enclosed channel 82, a pest must create its own opening in and through the solid outer wall 81 of the

pest baiting device 80 toward the enclosed channel by tunneling through the pest baiting device. Bishoff et al. teach a pest baiting device 80 having a solid outer wall 81 with no openings of any kind leading to the enclosed channel 82, while claim 15 requires that at least one channel pass through the aggregation base from the cylindrical outer surface leading to the void. With no teaching or suggestion of an opening of any kind between the solid outer wall 81 and the enclosed channel 82, Bishoff et al. cannot teach each and every element of claim 15.

The Office's argument in the present action that "since the channel goes through the aggregation base from top to bottom which are part of the outer surface, there are two openings that lead to the centrally located void" is unpersuasive with respect to amended claim 15. The claim requires that at least one channel pass completely through the aggregation base from the cylindrical outer surface and leading inward to the void. As defined in the specification, the cylindrical outer surface 40 includes the curved, cylindric surface of the aggregation base, but does not include the planar, top and bottom surfaces of the aggregation base. (As-filed application, paragraph 30) Bishoff et al. fail to teach such a channel passing from a cylindrical outer surface of the pest baiting device. The enclosed channel 82 extends merely to the planar top and bottom of the pest baiting device, with no openings from the cylindrical outer surface to the enclosed channel. Thus, Bishoff et al. do not teach each and every element of claim 15. Moreover, none of the other references of record provides further relevant teaching.

This omission is significant, because without at least one channel passing completely through the aggregation base from the cylindrical outer surface and leading inward to the void, the pest baiting device of Bishoff et al. does not encourage egress into the pest baiting device by termites. In contrast, the claimed at least one channel encourages termite egress into the aggregation base immediately upon contact with the aggregation base because the at least one channel provides a ready path for the termites. There is no need for the termites to excavate their own path through the aggregation base, as the at least one channel is provided for them.

As a result, the cited reference does not anticipate claim 15 because it fails to teach or suggest at least one channel passing through the aggregation base from the cylindrical outer surface and leading to the void. For at least these reasons, claim 15 is believed to be in condition for allowance. Claims 16, 17, 19, 20, and 24-32, which depend directly or indirectly from claim 15, are also submitted as patentable for the same reasons as claim 15.

New Claims 24-32

New claims 24-32 are submitted as patentable over the references of record. None of the references or records teach the novel and non-obvious aspects of claims 24-32.

Conclusion

Reconsideration and allowance of the pending claims is respectfully requested.

Enclosed is a check for \$130 in payment of the terminal disclaimer fee. If any additional fees are due, the Commissioner is hereby authorized to charge any under payment or credit any over payment to Deposit Account No. 19-1345.

In view of the foregoing, it is submitted that the claims of this application are in condition for allowance.

If the Examiner wishes to discuss this amendment with the undersigned, please call (314) 231-5400.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'B. Klein', with a stylized flourish at the end.

Brian P. Klein, Reg. No. 44,837
SENNIGER, POWERS, LEAVITT & ROEDEL
One Metropolitan Square, 16th Floor
St. Louis, Missouri 63102
(314) 231-5400

BPK/dss

Express Mail Label EV 544916942 US